

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

TAMMY WISE,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH
SERVICES,

Respondent.

) Case No. DISM-03-0016

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, GERALD L. MORGEN, Vice Chair. The hearing was held at the Cox Conference Center at Lakeland Village in Medical Lake, Washington, on February 17 and 18, 2004. BUSSE NUTLEY, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Tammy Wise was present and was represented by Christopher Coker, Attorney at Law, of Parr, Younglove, Lyman & Coker, P.L.L.C. Donna Stambaugh, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, gross misconduct, and willful violation of the published employing agency or Department of Personnel rules or regulations. Respondent alleges that Appellant abused Jeannie, a Lakeland Village client, by striking her on the back of the head with a large metal safety pin key chain.

II. FINDINGS OF FACT

2.1 Appellant was a permanent employee for Respondent Department of Social and Health Services. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on February 14, 2003.

2.2 Appellant was an Attendant Counselor 3 at Lakeland Village, which is a residential rehabilitation center established to provide round-the-clock care and services to persons with developmental disabilities. Appellant had no history of prior formal disciplinary action.

2.3 The Lakeland Village Procedure 3.1, Client Rights, states that Lakeland Village is responsible for ensuring the well being of clients. Lakeland Village Procedure 10.4, Client Abuse, states that Lakeland Village employees are responsible for protecting clients from harm and neglect. Mistreatment is defined as abuse, neglect, negligent treatment, or misappropriation of client property. Abuse is defined as the willful infliction of injury, unreasonable confinement, intimidation, punishment of some type of impermissible, unjustifiable, harmful, offensive or unwanted contact with a client.

2.4 By signature dated September 18, 2001, Appellant indicated she had read and was familiar with the above-referenced procedures.

2.5 By letter dated January 23, 2003, Terry Madsen, Superintendent of Lakeland Village, informed Appellant of her immediate suspension without pay from January 23, 2003 through February 6, 2003, followed by her dismissal effective February 7, 2003. Respondent alleged that

1 Appellant abused Jeannie, a Lakeland Village client, by striking her on the back of the head with a
2 large metal safety pin key chain.

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4 2.6 In making a determination of the allegations, we carefully weighed the testimony of the
5 witnesses and reviewed the documentary evidence in this case. Appellant was the only staff
6 member on duty that evening during the entire shift, and there was no evidence or witness to
7 corroborate her version of the events. Jeannie identified Appellant six times as the person who hit
8 her on the head. It is not likely that Jeannie's injuries were self-inflicted, nor was she capable of
9 cleaning up the blood that would have resulted from her head wound.

10
11 2.7 As a result, we do not find Appellant credible or her version of the events believable. We
12 find that Appellant more likely than not struck Jeannie in the back of her head with a large metal
13 safety pin key chain and then cleaned up Jeannie's blood.

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15 2.8 Sometime during the late evening to early morning hours of September 23/24, 2003, Jeannie
16 suffered an injury to her head that bled and later required three stitches. Appellant was working
17 alone during the night shift in the cottage where Jeannie was a resident.

18
19 2.9 Between 6:35 and 6:45 a.m., Tana LeDoux, Attendance Counselor, arrived to work her day
20 shift schedule in Jeannie's cottage. Ms. LeDoux entered Jeannie's room to find her curled up in her
21 bed with her arm clutched over her head and crying. Jeannie stated to Ms. LeDoux, "My head
22 hurts. The fat lady hit my head." Ms. LeDoux knew that Jeannie sometimes referred to Appellant
23 as the "fat lady" and sometime as "Momma." Ms. LeDoux noticed blood on the back of Jeannie's
24 head.

1 2.10 Ms. LeDoux summoned Denise Wentling, Attendance Counselor, and Debra Denman,
2 Residential Services Coordinator. Jeannie told Ms. Denman twice that the fat woman had hit her,
3 and repeated the same statement to Ms. Wentling.

4
5 2.11 Ms. LeDoux summoned Kathy Montague, Developmental Disabilities Administrator, and
6 John Gilden, Attendant Counselor Manager. Ms. Montague and Mr. Gilden examined the room for
7 blood, took photos, and secured Jeannie's pajama top, bed sheets, and bed. They failed to find
8 anything in Jeannie's room that would have caused the lacerations on her head.

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10 2.12 Norma McKinney, Rehabilitation Planning Administrator, interviewed Jeannie in the
11 presence of Ms. LeDoux and Mr. Gilman. During the interview, Jeannie stated that "Momma
12 pushed her down" and "Momma hit key."

13
14 2.13 Dr. Maria Montenegro administered stitches to Jeannie's lacerations and testified that only a
15 blow with a great deal of force would have caused such a head wound and such wounds normally
16 bleed profusely. Dr. Montenegro also stated that if Jeannie had fallen or if the injury had been self-
17 inflicted, the location of the lacerations would have been different.

18
19 2.14 After hearing Jeannie say the word "key," Ms. Montague remembered that safety pin key
20 chains were used at Lakeland Village prior to an April 19, 2002 directive prohibiting their use. Mr.
21 Gilden conducted a test by striking a peach with one of the safety pin key chains. The key chain
22 left the same type of mark that was found on the back of Jeannie's head. Further, Ms. LeDoux held
23 the safety pin key chain up to Jeannie's wound, and it matched the shape of her wound.

24
25 2.15 Ms. LeDoux and Steven Groskruth, Attendant Counselor, testified that they saw Appellant
26 using a safety pin key chain after the April 19, 2002 directive was distributed.

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2 2.16 Due to Dr. Montenegro's statement that head wounds normally bleed profusely, Ms.
3 Montague investigated the lack of blood in Jeannie's room and contacted the Lakeland Village
4 laundry room. Steven Kellen, Laundry Room Supervisor, reported that towels bright red and
5 covered with blood arrived at the laundry on the morning of September 24, 2003, but he was unable
6 to report where the towels came from.

7
8 2.17 While before us, Appellant testified that she did not deliver the dirty laundry to the laundry
9 bin that morning but rather had a client take the laundry to the bin. However, Ms. Montague
10 testified that she observed Appellant delivering laundry to the laundry bin.

11
12 2.18 Ms. Montague contacted the Medical Lake Police Department to request an investigation of
13 a possible client assault. Officer Joseph Mehrens of the Washington State Patrol conducted a
14 criminal investigation. Officer Mehrens testified that he found traces of blood on the wall next to
15 the bed, on the light switch, on the headboard of the bed, and on the metal edge of the bed. Since
16 Jeannie had suffered a head wound, Officer Mehrens expected to find more blood, and it appeared
17 to him that the room had been cleaned of blood. Officer Mehrens found nothing in Jeannie's room
18 that could have made the lacerations on her head.

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20 2.19 Officer Mehrens interviewed Appellant, and she reported that Jeannie sometimes called her
21 "the fat lady."

22
23 2.20 Officer Mehrens interviewed Jeannie and showed her photomontage of six Lakeland Village
24 staff members, similar in appearance and stature. Officer Mehrens asked Jeannie to point out
25 "Momma," and Jeannie pointed to the photo of Appellant.

1 2.21 On January 13, 2003, Mr. Madsen conducted a pre-termination review with Appellant to
2 give her an opportunity to respond to the allegations. Appellant reported that she did not know how
3 Jeannie had been injured.

4
5 2.22 Appellant denied striking Jeannie on the back of the head, and stated that she had not used a
6 safety pin type key chain for several years. Appellant testified that Jeannie got out of bed during
7 the middle of the night to use the bathroom, appeared fine, and returned to bed on her own.
8 Appellant did not observe anything unusual, did not see anyone cleaning up blood, and was not told
9 by Jeannie that she had been injured. Appellant claimed she was not aware until the following day
10 that Jeannie had been injured.

11
12 2.23 Mr. Madsen reviewed Appellant's responses to the allegations, Officer Mehrens'
13 investigation report, the Lakeland Village internal incident reports, statements from employees, and
14 the appropriate policies and guidelines. Mr. Madsen determined that Appellant more likely than not
15 struck Jeannie on the head, cleaned up the resulting blood, and then denied any involvement in the
16 incident. In light of Lakeland Village's zero tolerance for client abuse of any kind, Mr. Madsen
17 concluded that dismissal was the only appropriate sanction.

18 19 **III. ARGUMENTS OF THE PARTIES**

20 3.1 Respondent argues that Appellant was the only staff member on duty the night Jeannie was
21 injured. Respondent asserts that Jeannie reported at least six times that Appellant hit her on the
22 head. Respondent contends there was nothing in Jeannie's room that could have caused such a head
23 wound. Respondent argues that Jeanne was not capable of cleaning up blood from a head wound
24 without assistance. Respondent contends two staff members saw Appellant with the safety pin key
25 chain *after* the April 19, 2002 directive to eliminate their use by staff. Respondent argues that a
26 safety pin key chain left a mark on a peach identical to Jeannie's wound, and the safety pin key

1 chain matched the shape of Jeannie's head wound. Respondent contends Appellant more likely
2 than not caused Jeannie's injury and dismissal was the appropriate sanction.

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4 3.2 Appellant argues she did not strike Jeannie nor does she know how Jeannie was injured.
5 Appellant asserts she had not used the safety pin type key chain since the April 19, 2002 directive.
6 Appellant contends that Jeannie has a history of self-abusive behavior, falling down, and banging
7 her head when she is angry. Appellant argues that Jeannie made prior false accusations against
8 others. Appellant asserts that Jeannie's ability to relate facts was questionable, and she was
9 coached and directed to say that "Momma" injured her. Appellant argues she worked at Lakeland
10 Village for over 20 years with no prior history of corrective or disciplinary action or any kind of
11 patient abuse. Appellant contends that Jeannie most likely fell and hit her head. Appellant asserts
12 she was put in a position of defending herself against allegations that no one witnessed.

13 14 IV. CONCLUSIONS OF LAW

15 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.
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17 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
18 the charges upon which the action was initiated by proving by a preponderance of the credible
19 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
20 sanction was appropriate under the facts and circumstances. WAC 358-30-170; [WAC 251-12-
21 240(1)]; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

22
23 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
24 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
25 of Social & Health Services, PAB No. D86-119 (1987).
26

1 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
2 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant
3 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's
4 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

5
6 4.5 Respondent has met its burden of proof that Appellant's misconduct constitutes neglect of
7 duty and rises to the level of gross misconduct. Appellant neglected her duty to protect and ensure
8 the safety of Lakeland Village clients, and to maintain an environment free from any form of
9 mistreatment. Appellant's abuse of Jeannie clearly interferes with Lakeland Village's mission to
10 provide quality care to vulnerable residents.

11
12 4.6 Willful violation of published employing agency or institution or Personnel Resources
13 Board rules or regulations is established by facts showing the existence and publication of the rules
14 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
15 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

16
17 4.7 Respondent has met its burden of proof that Appellant had knowledge of and willfully
18 violated Lakeland Village's Procedure 3.1, Client Rights, and Lakeland Village Procedure 10.4,
19 Client Abuse.

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21 4.8 In determining whether a sanction imposed is appropriate, consideration must be given to
22 the facts and circumstances, including the seriousness and circumstances of the offenses. The
23 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to
24 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
25 program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

1 4.9 Based on Appellant's egregious misconduct, Respondent has established that the
2 disciplinary sanction of dismissal was not too severe and was appropriate under the circumstances
3 presented here. Therefore, the appeal should be denied.
4

5 **V. ORDER**

6 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Tammy Wise is denied.
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8 DATED this _____ day of _____, 2004.
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10 WASHINGTON STATE PERSONNEL APPEALS BOARD
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12 _____
13 Walter T. Hubbard, Chair
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15 _____
16 Gerald L. Morgen, Vice Chair
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